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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,683	05/20/2004	Jean-Jacques Berthelon	MERCK 2358	7804
23599 7590 06/06/2007 MILLEN, WHITE, ZELANO & BRANIGAN, P.C. 2200 CLARENDON BLVD. SUITE 1400 ARLINGTON, VA 22201			EXAMINER COLEMAN, BRENDA LIBBY	
			ART UNIT	PAPER NUMBER
			1624	
			MAIL DATE	DELIVERY MODE
			06/06/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/019,683

Applicant(s)

BERTHELON ET AL.

Examiner

Brenda L. Coleman

Art Unit

1624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 12-19 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 12-19 and 21-25 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

Claims 1-8, 12-19 and 21-25 are pending in the application.

This action is in response to applicants' amendment dated March 20, 2007.

Claims 1-8 and 12-19 have been amended, claims 9-11 and 20 have been canceled and claims 21-25.

### *Response to Arguments*

Applicant's arguments filed March 20, 2007 have been fully considered with the following effect:

1. With regards to the 35 U.S.C. § 112, first paragraph rejection of claims 18 and 19 labeled paragraph 4) in the last office action, the applicants' arguments have been fully considered, however they were not found persuasive. The applicants' stated that the term preventing is removed from the rejected claims without prejudice or disclaimer, rendering this rejection moot. However, this does not address the enablement requirement with respect to dyslipidaemia, atherosclerosis or diabetes **complications**. The applicants' have failed to provide direction or guidance as to what is meant by the complications associated with dyslipidaemia, atherosclerosis or diabetes.

Claim 19 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention, for reasons of record and stated above.

Art Unit: 1624

2. The applicants' amendments are sufficient to overcome the 35 U.S.C. § 112, second paragraph rejections labeled paragraph 5a), b), c), d), e), f), g), h), i), k), l) and m) of the last office action, which are hereby **withdrawn**. However, with regards to the 35 U.S.C. § 112, second paragraph rejection labeled paragraph 7j) of the last office action, the applicant's amendments and remarks have been fully considered but they are not persuasive.

j) The applicants stated that antecedent support is present in the definition of R<sub>7</sub> to the material to which allegedly no such support was present, see for example, original claim 1, page 88, line 21 and lines 25-30. However, the definition of R<sub>7</sub> in claim 1 and also on page 88, line 21 and lines 25-30 fail to describe the definition of the substituents of the aryl and heteroaryl portions of R<sub>7</sub> such that the substituent is (C<sub>6</sub>-C<sub>10</sub>)aryl, which (C<sub>6</sub>-C<sub>10</sub>)aryl radical is optionally substituted with halogen, optionally halogenated (C<sub>1</sub>-C<sub>6</sub>)alkyl, (C<sub>1</sub>-C<sub>6</sub>)alkoxy or nitro.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, for reasons of record and stated above.

3. The applicants' amendments are sufficient to overcome the 35 U.S.C. § 101, rejection labeled paragraph 6) of the last office action, which is hereby **withdrawn**.

4. With regards to the 35 U.S.C. § 102, anticipation rejection labeled paragraph 7) in the last office action, the applicants' arguments have been considered but are not

Art Unit: 1624

found persuasive. The applicants' stated that no compounds in FR 2 550 199, including in its examples, have in the corresponding position to the claimed  $R^7$ , an OH group and that no compound in FR '199 has in the corresponding position to the claimed  $R^4$  and  $R^5$  a  $-CR^6=CR^7-$  group, but instead the corresponding group to  $R^4$  and  $R^5$  together is  $-CR^6=C(=O)-$ , i.e.  $R^7$  is always Oxygen bonded to the carbon atom bearing said Oxygen by a double bond, and there is no double bond between the two carbon atoms bearing the groups  $R^6$  and  $R^7$ . However, the compounds of FR '199 are tautomers of the compounds of the instant invention where the keto form of the compounds is set forth in FR '199 and the enol form of the compounds is the instant invention. Tautomers are organic compounds that are interconvertible by a chemical reaction called tautomerization. This reaction results in the formal migration of a hydrogen atom or proton, accompanied by a switch of a single bond and adjacent double bond. In solutions where tautomerization is possible, a chemical equilibrium of the tautomers will be reached.

Claims 1-7, 16-19 and newly added claims 21-25 are rejected under 35 U.S.C. 102(b) as being anticipated by FR 2 550 199, for reasons of record and stated above.

In view of the amendment dated January 9, 2007, the following new grounds of rejection apply:

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Art Unit: 1624

5. Claims 1-5, 12-19, 21 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The following reasons apply:

- a) Claims 1-5, 12-19, 21 and 22 are vague and indefinite in that it is not known what is meant by the definition of the substituents of the aryl portion of the (C<sub>6</sub>-C<sub>18</sub>)aryl fused to the ring formed by CR<sub>6</sub>=CR<sub>7</sub> in line 5 on page 8 where there is an unmatched closed parenthesis.
- b) Claims 15 and 17 are vague and indefinite in that it is not known what is meant by "of a the" ketone.

### ***Claim Objections***

6. Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. None of the prior art of record or a search in the pertinent art area teaches or fairly suggests the substituted species as claimed herein.

7. Claim 23 is objected in that the claim possess non-elected subject matter, i.e. the 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> species in response to the Applicant's election with traverse of Group II in the reply filed on October 23, 2006.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 1624

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

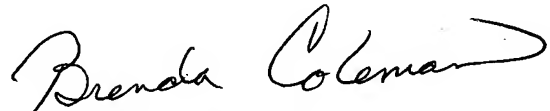
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda L. Coleman whose telephone number is 571-272-0665. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Art Unit: 1624

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink that reads "Brenda Coleman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brenda L. Coleman  
Primary Examiner Art Unit 1624  
Sunday, June 03, 2007